

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

FREDDIE SUE DILLARD

PLAINTIFF

VS.

CIVIL NO. 1:97CV140-JAD

THE NEW YORK TIMES COMPANY

DEFENDANT

MEMORANDUM OPINION

Plaintiff Dillard alleges that Defendant employer The New York Times Company violated the Employment Retirement Income Security Act, 29 U.S.C. 1001 (ERISA), when she was denied benefits under defendant's Long Term Disability Plan. Defendant has moved for summary judgment on all issues. Plaintiff concedes in her brief that ERISA preempts her state law claims and that she is not entitled to punitive damages.

Factual Background

The facts are uncontested. Freddie Sue Dillard was employed as an advertising salesperson for *The Banner-Independent*, a weekly newspaper in Booneville, Mississippi for thirteen years. During the course of Dillard's employment and until July 31, 1995, when the paper was sold, *The Banner-Independent* was owned and operated by TSP Newspapers, Inc., a wholly-owned subsidiary of the Times.

On May 11, 1995, Mrs. Dillard suffered a complication of her diabetes when her blood sugar dropped dangerously low and she lost consciousness. As a consequence, she took leave under the Times' short term disability policy. Mrs. Dillard never returned to work at the newspaper, and she has been unable to resume work of any kind. The parties are agreed that

Mrs. Dillard is totally and permanently disabled.

On March 3, 1995, two months before Mrs. Dillard's short term disability leave began, the Times announced its plan to sell *The Banner-Independent* and six other regional newspapers. On August 1, 1995, Paxton Media Group took ownership of *The Banner-Independent*, and the employment relationship between the Times and all employees, including Mrs. Dillard, was terminated. Paxton offered employment to *Banner-Independent* employees, except those who were on layoff or leave of absence. Hence Dillard was not hired by Paxton, and her disability benefits were terminated.

Sometime in August 1995 Mrs. Dillard applied for long term disability benefits under the Times' Long Term Disability Benefits plan. Her application was denied because she had not completed the five-month Qualifying Period. Her appeal was likewise denied on the same basis. Mrs. Dillard contends she was eligible for long term disability benefits because she had completed more than thirteen years of service with the Times, and she had fulfilled the application process.

The language of the contract

The 1991 Revised Benefits Book, which sets out the plan in effect at the time this cause of action arose, specifies that the plan applies only to full-time employees. (Section 3.1 and Section 2.6). An employee's participation in the plan terminates on the date his/her employment with the company is terminated, as determined by the Company. (Section 3.4). An eligible participant (i.e. fulltime employee) qualifies for long term disability benefits under the Plan as follows:

5.1 Commencement and Duration. If a Participant is continuously Totally Disabled during and beyond his Qualifying Period, except as provided in Section 5.5, he shall be paid a Monthly Disability

Income for the period of his Total Disability commencing with the first day following completion of his Qualifying Period....

2.14 "Qualifying Period" shall mean, with respect to a Participant, a period of five consecutive months of Total Disability during which the Participant was eligible under the Plan....

Conclusions of law

Based on the plan sections cited above, Mrs. Dillard's claim for benefits must fail because she did not satisfy the Qualifying Period. It is clear that she was terminated from employment with the Times, albeit by circumstances beyond her control and without any fault on her part, before completing five consecutive months of total disability as a full-time employee. Her own deposition illustrates that she was well aware of those plan requirements. Dillard deposition, p. 53. Her argument that the plan does not require "continuous employment" is specious when the plan is read as a whole document.

Accordingly, the court grants Summary Judgment in favor of the defendant on all issues. A separate judgment will be entered.

THIS _____ day of March, 1998.

UNITED STATES MAGISTRATE JUDGE